

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA  
Montana Twenty First Judicial District Court, County of Ravalli

STATE OF MONTANA,	)	
	)	
Plaintiff,	)	
	)	CAUSE NO. DJ-17-045
-vs-	)	
	)	DECISION
ALLI SANDRA MARIE KERR,	)	
	)	
Defendant.	)	

The Defendant was the subject of a Petition to Revoke Probation filed in Youth Court on August 7, 2018. On September 26, 2018, Defendant's supervision was transferred to the Department of Corrections, Adult Probation and Parole. As to Charge I: Criminal Possession of Dangerous Drugs, Defendant was committed to the Department of Corrections until her 25<sup>th</sup> birthday (February 14, 2025) with no time suspended. As to Charge 2: Criminal Possession of Drug Paraphernalia, Defendant's time served in the Ravalli County Detention Center, 43 days, was deemed the appropriate disposition and sentence. The Court recommended she be screened for placement in the highest intensity chemical dependency treatment programming available.

On April 5, 2019, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division"). The Defendant was present and was represented by Brent Getty of the Office of the State Public Defender. The State was not represented.

Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it. The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that she understood this and stated that she wished to proceed.

Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

A majority of the Division finds that the reasons advanced for modification are insufficient to hold that the sentence imposed by the District Court is clearly inadequate or clearly excessive. Therefore, it is the decision of the Division that the sentence is **AFFIRMED**.

Done in open Court this 5<sup>th</sup> day of April, 2019.

DATED this 25<sup>th</sup> day of April, 2019.

SENTENCE REVIEW DIVISION

  
Hon. Brenda Gilbert, Chairperson

  
Hon. Dan Wilson, Member

Judge Berger dissents:

On August 7, 2018 a Petition to Revoke Probation was filed in Youth Court for Alli Sandra Marie Kerr, who was serving a disposition of “probation until her twenty-first (21<sup>st</sup>) birthday, on February 12, 2021” for committing the offense of Possession of Dangerous Drugs in violation of § 45-9-102(3), MCA.<sup>1</sup> At the time of this petition Kerr was 18 years old, having become an adult approximately 6 months prior. In September of 2018 the parties entered into a plea agreement which contemplated a § 208 transfer and DOC commitment until the age of 25. Ultimately, Kerr was “committed to the Montana Department of Corrections, for a period of time from today’s date until the age of twenty-five (25), which she will attain on February 14, 2025, *with none of that time suspended as to Charge 1.*” (*emphasis added*)

This case is distinguishable from a situation where an adult offender “does life on the installment plan” as Kerr (if charged as an adult) did not receive the potential maximum 5-year sentence (for purposes of this argument all suspended), serve 2 years of that sentence, then go through a revocation process and receive a 5-year with none suspended sentence, thus turning a 5-year sentence into a 7-year sentence. Kerr received a flat 6-year 4 month and 19-day sentence on September 26, 2018. The only reason Kerr was eligible to receive this length of sentence with no time suspended was her case originated in Youth Court and was subject to a § 208 transfer. While the purpose of Youth Court is to supervise a youth outside of the adult system

---

<sup>1</sup> The maximum exposure for an adult charged with this offense is 5 years to the state prison.

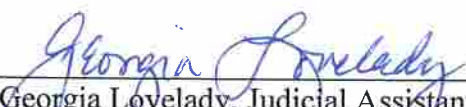
until age 21, unless transferred pursuant to § 208 with supervision until age 25, the spirit of this can be broken if a youth is placed into the adult system and receives a sentence with no time suspended greater in length than a similarly situated adult could receive.

For these reasons I find her sentence to be clearly excessive and I would modify the sentence to have Kerr under the supervision of the DOC until September 26, 2023, thus receiving a 5-year sentence with no suspended time.

  
\_\_\_\_\_  
Hon. Luke Berger, Member

Copies mailed this 7th day  
of May, 2019, to:

Clerk of District Court (Original)  
Alli Sandra Marie Kerr #3025230, Defendant (2)  
Hon. Jeffrey Langton  
Brent Getty, Defense Counsel  
Meghann Paddock, Esq.  
Board of Pardons and Parole  
MWP - Records Dept.

  
\_\_\_\_\_  
Georgia Lovelady, Judicial Assistant  
Sentence Review Division